

## LABOUR DEPARTMENT

The 27th April, 1982

No. 9(1)82-6-Lab/73896.—In pursuance of the provision of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Northern Minerals Pvt. Ltd., Daultabad (Road), Gurgaon.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,  
HARYANA, FARIDABAD

Reference No. 178 of 1981

between

SHRI BALDEV RAJ, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S NORTHERN  
MINERAL PVT. LTD. DAULTABAD ROAD, GURGAON

Present :—

Shri Shardha Nand for the workmen

Shri A.D. Kolhatkar for the respondent.

## AWARD

This reference No. 178 of 1981 has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/GGN/17/81/26589, dated 26th May, 1981, under section 10(i)(c) of the Industrial Disputes Act, 1947 existing between Shri Baldev Raj, workman and the respondent management of M/s Northern Mineral Pvt. Ltd., Daultabad Road, Gurgaon. The term of the reference was :—

Whether the termination of services of Shri Baldev Raj was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties after receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that the workman was appointed as helper on 1-8-1980 at monthly salary of Rs. 240 per month and was illegally terminated on 13-1-1981. The termination is quite unjustified and due to un-fair labour practice. So the workman is entitled for the reinstatement with continuity of service and back wages.

The case of the respondent according to the written statement is that there never exist any relationship of employer and employee between the applicant and the respondent and there is no question of termination of service. So the reference may be rejected.

On the pleadings of the parties, the following issues were framed :—

- (1) whether there is any relationship between the parties of employer and employees exists? If so, to what effect?
- (2) whether the termination of services of the workman is proper, justified and in order? If not, to what relief is he entitled?
- (3) Relief?

My findings on the issues are as under :—

## Issue No. 1

The representative of the respondent argued that where there is a issue of relationship between the parties it is heavily on the claimant to prove this issue as decided in the case Swapna Das Gupta and other *versus* the First Labour Court at West Bengal and others (1976-Lab. I.C. Page 202) "where a person asserts that he was a workman of the company and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the Company but for some other person". "In order to attract Section 2-A there must be an action of employer against the workman and when the relationship is denied than section 2-A is attracted". In this case the workman has appeared as WM-1 to prove this issue. He did not give any document to support his claim that he was the workman with the respondent. The respondent company is limited

firm and ESI and P.F. is applicable there. Regular inspections of Labour & E.S.I. & P.F. were also held. If he would have been employee of the company then in that case he should have proved some documentary evidence, but as there was no relationship he could not do so. The claimant has stated in his statement that the company used to deduct ESI from him then in that case his name should have on E.S.I. records but he has not proved that facts from the records. He has failed to mention in his cross-examination that how much deduction used to cut from his wages. The claimant has produced Shri Ram Baran another witness as WW-2. Even he could not point out about his presence in the company. He has simply said that he used to work in the company which did not prove the fact of relationship. The witness Shri Ram Baran has stated that the company used to give the attendance card and E.S.I. card to the workmen, but no E.S.I. card is produced in the Court to prove the fact of relationship. The witness further admitted in his cross-examination that the claimant never took the salary in the register, when other employees used to get their pay on register. When the other employees get the attendance cards and E.S.I. cards, it cannot be said that the claimant could not get these things. The respondent has produced the attendance registers from 1-8-80 to 13-8-1981 which is documentary evidence and MW-1 has stated that the claimant was not in the employment of the respondent company and he has produced photo stat copies of attendance register from 1-1-1980 to 13-8-80 which are Ex. M-1 to M-10 to prove this fact that there is no name of the claimant in the attendance register. The claimant should have called the attendance and wages register of the respondent company to prove his case which he did not prove and the respondent produced the copies of wages and attendance register of the workmen which clearly shows that the claim was not the workmen of the respondent. The evidence produced by the workmen has not given any specific details of the workman that when he joined and when he was removed. He has simply stated that the claimant worked in the company for 8 months which did not prove the fact of relationship.

The representative of the workman argued that the workmen joined the service of the respondent 1-8-80 as helper at a salary of Rs. 240 per month and was terminated on 13th January, 1981 without giving any notice or charge-sheet. He was given no appointment letter and also not given the attendance card. The respondent did not give him the wages slip as stated by the claimant as WW-1. When he asked for the E.S.I. Card and Attendance Cards from the Manager then they have terminated the services of the workman. He further argued that as stated by the workman he was given the pay on the registers which the respondent has not produced in the Court. The claimant was not paid the wages for 13 days for the month of January, 1981. The statement of the workman was supported by the Shri Ram Baran co-workman who has stated that the claimant worked in the factory for 8 months. He has stated that the salary was paid to the claimant on a separate registers. There was a strong union in the factory and the workman was the active member of the union and he was terminated due to the union activities.

After hearing the arguments of both the parties, and going through the file, I am of the view that the claimant has failed to prove that he was an employee of the respondent factory. He has not produced even a single document to prove this fact without which nobody can believe that he was the employee of the company. He has only produced one person which states as co-workman WW-2 who has also not given any cogent to be believed that the workman was the workman in the respondent factory. He has stated that the employee of the company were given the attendance and E.S.I. Cards but gave no reason why these cards were not given to the claimant. If these cards were not given they have not made any complaint to any authority to enforce the right of the claimant. On the other hand the respondent produced the copies of attendance and wages register in which there is no name of the claimant mentioned. The workman should have called the records of the respondent to prove this fact that he used to get all the pay and used to attend the factory without which no relationship can be existed. So the issue is decided against the workman and in favour of the respondent.

#### Issue Nos. 2 & 3 :

After deciding issue No. 1 there is no need of discussing these issues because there is no relationship of employer and employee between the parties so there is no termination and no relief is required to the workman. So this issue is decided in favour of the respondent.

This be read in answer to this reference.

Dated : The 9th July, 1982.

**HARI SINGH KAUSHIK,**

Presiding Officer,  
Labour Court, Haryana, Faridabad.

Endorsement No. 1596, dated 14th July, 1982

Forwarded (four copie) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

**HARI SINGH KAUSHIK,**

Presiding Officer,  
Labour Court, Haryana, Faridabad.